

## **ORDER ON I.A.No.1**

This is an application filed by the applicant/petitioner U/sec.36(2) of Arbitration and Conciliation Act R/w Sec.151 of CPC.

**2.** Brief facts of the annexed affidavit of the applicant are as under:-

The present petition has been filed seeking stay of the operation and the execution of the arbitral award dated 13.04.2024 and the modified arbitral award order dated 24.05.2024 passed by the Arbitral Tribunal (ad-hoc Arbitration). Under the Arbitration and Conciliation Act 1996 until disposal of the present arbitration case. The main petition is filed highly aggrieved with the arbitral award passed by the ad-hoc Arbitral Tribunal and challenged the same u/Sec.34 of Arbitration and Conciliation Act. The dispute arises from a share purchase agreement (SPA) dated 23.01.2018, wherein applicant acquired the entire share holding of the respondents in the erstwhile EXILANT. That following the SPA the EXILANT merged with the applicant company on 15.02.2018 same has been confirmed by the official order from Ministry Of Corporate Affairs on 02.11.2018. The arbitral award is initiate patent illegality since it ignore vital evidence and reaches conclusions that are without evidentiary support and dismissing the counter claim of the applicant in its

entirety is also patent illegality. The tribunal failed to recognize the right for recovery of damages suffered by the applicant even when the parties have expressly authorized it clause 18.7 of SPA. The arbitral award is violation of Sec.2(1)(f)(i) and Sec.11(6) of the Act, thus it is against to the public policy. The arbitral award is patently illegal as the same is passed by an arbitral tribunal not duly constituted as per the statutory or contractual requirements. Awarding interest upon interest by arbitral tribunal is neither permissible under the SPA nor any other law. The tribunal failed to consider that EXILANT was never engaged in non-I S&T business with apple and therefore the same cannot be read in the definition of AI business under schedule 2 of the SPA. The arbitral award violates Sec.2(1)(f)(i) R/w Sec.11 of the Act. The arbitral tribunal was improperly constituted due to the jurisdictional error. The tribunal failed to address the jurisdictional plea appropriately the arbitral tribunal was not properly constituted according to the act or the SPA. The arbitral tribunal error in treating the High Court order as final despite lack of jurisdiction. The arbitral award is perverse and illegal. The arbitral award is tainted with patent illegality, particularly evident in tribunal's dismissal of applicants counter claim. The tribunals conclusion was result of misinterpretation of the impact of respondent No.1's action on the I S & T business and a failure to

address and breaches of confidentiality of respondent No.1. The tribunal erred by disregarding the impact of material adverse change of business efficacy of the SPA. The applicant has made out prima facie case, the award is bad in law, perverse and suffers from patent illegality and is contrary to the public policy of India, which errors are apparent on the phase of records and the justification of arbitral tribunal in the award. Therefore the operation and execution of the award is required to be stayed until Sec.34 application is disposed off by this court. Accordingly prayed for allowing the petition.

**3.** These facts have been denied by the opponent/respondents in the objection statement contended that the application is not maintainable either in law or on facts of the case. These respondents denying all the allegations and assertions made by the applicant in the application except to the extent specifically adverted to and admitted herein. The grant of stay in the case of an arbitral award for payment of money has to be considered as per the provisions of Order 41 Rule 5(3) of CPC, according to it stay of execution and operation has to be granted subject to deposit or furnished the cash security. In the present application filed u/Sec.34 of Arbitration and Conciliation Act there is no allegation of fraud or corruption therefore the award shall not be stayed until sufficient

securities furnished. The arbitral award in the present proceedings undisputedly in the nature of money decree as it directs payment of amount pursuant to the share purchase agreement executed by the parties herein. It is pertinent to note that as on 27.08.2024 the applicant is obligated to pay a sum of Rs.INR 59,38,25,893/- to the respondent No.1 to 24 in terms of the arbitral award, accordingly the applicant is obligated to deposit 100% of awarded amount along with any additional interest accrued up to the date of deposit before requesting for stay on the enforcement of the arbitral award. The applicant is not entitled for the order of stay of the arbitral award as prayed for in the application. The award passed by the arbitral tribunal is fair, objective and reasonable. The arbitral tribunal has taken into consideration of the pleadings filed by parties and passed speaking award it has gone into each of the claims and the counter claim made by the parties, accordingly adjudicated upon the same by dealing with all contentions of the parties. There is nothing in the arbitral award which shall shock the concerns of the court or indicate that the award is without jurisdiction. The application is devoid from merit filed with an intention to protract the execution, so also harass the respondents same is liable to be dismissed with cost in the interest of justice and equity accordingly prayed for the dismissal of the same.

**4.** Heard the arguments of both sides. Perused the petition averments, annexed affidavit, objections and available materials placed on record.

**5.** The learned counsel for the applicant in support of his oral argument has relied following decisions:-

1) Hindustan Zinc Limited (HZL) Versus Ajmer Vidyut Vitran Nigam Limited (2019) 17 SCC 82, Decision dated 04.12.2019.

2) State of Madhya Pradesh and others V/s Modern Builders-2021 SCC Online MP 2884, Decision dated 05.07.2021.

3) Amway India Enterprises Pvt Ltd V/s Ravindranath Rao Sindhia and another (2021) 8 SCC 465, Decision dated 04.03.2021.

4) Aslam Ismail Khan Deshmukh V/s ASAP Fluids Pvt Ltd 2019 SCC Online Bom 304, Decision dated 22.02.2019.

5) MSK Projects India (JV) Limited V/s State of Rajasthan & ANother (2011) 10 SCC 573, Decision dated 21.07.2011.

6) TDM Infrastructure Pvt Ltd V/s UE Development India Pvt Ltd 2008 SCC Online SC 895, Decision dated 14.05.2008.

7) Sobha Limited V/s Nava Vishwa Shashi Vijaya Krishna Properties Pvt Ltd 2022 SCC Online Kar 1708

Decision dated 10.06.2022.

8) Hyder Consulting (UK) Ltd V/s Governor, State of Orissa (2015) 2 SCC 189 Decision dated 25.11.2014 further upheld in the decision dated 12.03.2015.

9) M/s D Khosla & company V/s Union of India Special Leave Petition (Civil) No.812/2014 07.08.2024.

10) Ssangyong Engineering and Construction Company Limited V/s National Highways Authority of India (NHAI-(2019) 15 SCC 131, Decision dated 08.05.2019.

11) VLCC Health Care Ltd V.s Y.Divakar and others Writ Petition No.21987/2022.

12) Balmer Lawrie and Co.Ltd V/s Shilpi Engineering (P) Ltd 2024 SCC Online Bom 758.

13) Sepco Electric Power Construction Corpn. V/s Power Mech Projects Ltd 2022 SCC Online SC 1243.

14) Mahanagar Telephone Nigam Ltd V/s Canara Bank 2023 SCC Online Del 1172.

15) Earnest Business Services (P) Ltd V/s Government of the State of Israel 2019 SCC Online Bom 1793.

16) Antikeros Shipping Corporation V/s Adani Enterprises Ltd 2020 SCC Online Bom 277.

17) Zee Sports Ltd V/s Nimbus Media Pte. Ltd SCC Online Bom 426.

18) Kishor Shah and others V/s Urban Infrastructure Trustees Ltd and others 2020 SCC Online Bom 4098.

19) Alkem Laboratories Ltd V/s Issar Pharmaceuticals Pvt Ltd (I.A.377 of 2024 IN Com.A.P.389 of 2023).

20) Jackie Kakubhai Shroff V/s Ratnam Sudesh Iyer 2018 SCC Online Bom 21214.

21) CFM Asset Reconstruction Pvt Ltd and another V/s SAR Parivahan Pvt Ltd 2024 SCC Online Bom 1659.

22) Aurum Ventures Pvt Ltd V/s H.T. Media Ltd and others 2024 SCC Online Del 4061.

23) Ecopack India Paper Cup Pvt Ltd V/s Sphere International 2018 SCC ONLINE Bom 540.

**6.** That on the contrary learned counsel for the respondents in support of his oral argument has relied following decisions.

1) V.L.C.C Health Care Ltd V/s Y Divakar and others, Writ petition No.21987/2022 (Honb'le High Court of Karnatka Bengaluru bench)

2) Balmer LAwrie & Co.Ltd V/s Shilpi Engineering (P) Ltd 2024 SCC Online Bom 758.

3) Sepco Electric Power Construction Corpn V/s Power MEch Projects Ltd 21, 2022 SCC Online SC 1243.

4) Mahanagar Telephone Nigam Ltd V/s Canara Bank, 2023 SCC Online Del 1172.

5) Earnest Business SERVICES (P) Ltd V/s Government of the state of Israel, 2019 SCC Online Bom 1793.

6) Antikeros Shipping Corporation V/s Adani Enterprises Ltd 2020 SCC Online Bom 277.

7) Zee Sports Ltd V/s Nimbus Media Pte Ltd 2017 SCC Online Bom 426.

7. I have gone through the principles laid down in all the above referred cases.

8. Following points arisen for my consideration are:-

1) Whether the impugned Arbitral Award dated 13.04.2024 and modified Arbitral Award dated 24.05.2024 is required to be stayed as prayed for?

2) What Order?

9. My findings to the above points are as under:

**Point No.1:-** Partly in the Affirmative

**Point No.2:-** As per the final Order  
for the following:

### **REASONS**

**10. Point No.1:-** The applicant herein had challenged the arbitral award dated 13.04.2024 as well as the modified award dated 24.05.2024 on the ground that the arbitral award is vitiated by patent illegality since it ignores vital evidence and reaches conclusions that or without evidentiary support. The tribunal failed to recognize the right for recovery and damages suffered by the applicant



despite the parties have expressly authorize the award is in violation of Sec.2(1) (f) (i) R/w Sec.11(6) of the Act, it is against to the public policy. The Arbitral tribunal has not been duly constituted and also on other various grounds. Thereby sought for staying the operation and execution of the award. These facts have been strongly opposed by the opposite respondents contended that application is not maintainable either in law or on facts of the case. The award has been passed by three members of arbitral tribunal after going through the records meticulously and made elaborate evaluation of the relevant document facts evidence by applying legal proportion of law. The application is only to protract the proceedings and to drag the execution proceedings same is not permissible. That as per the principles laid down by Hon'ble High Courts as well as Hon'ble Supreme Courts, if award is required to be stayed by the judicial order it has to be taken into consideration of the fact that execution of award cannot be obstructed without their being justification. Moreover while granting the stay order of operation of the award court has to make provision to furnish security to the award amount and court has to considered the provisions under Order 21 Rule 5(3) of CPC while granting the stay order. The award is nothing but money decree, so the rules applicable for granting stay order of money decree has also be made applicable to the present case. The

applicant is required to deposit 100% of the award amount otherwise there is very difficult for respondents to execute the award in future. Accordingly prayed for directing the applicant to furnish bank guarantee or to deposit the award amount with interest till to meet the ends of justice. That even the principles laid down in the citation relied by the learned counsel for the applicant the Hon'ble High Court of Bombay & New Delhi it is made it clear that if the arbitration award is challenged on the ground of patent illegality, violation of public policy on serious issues of misinterpretation such award is required to be stayed, but the ground of patent illegality as well as violation of public policy is again depends on the facts and circumstances of each case. The court after satisfying can stay the operation and execution of the award, so the grounds urged by the applicants for setting aside arbitral award and its modified award are required to be established by the applicant while disposing the main petition on merit. If he succeeds then he will be entitled for the relief sought in the petition, otherwise he will be out of court. If applicant is failed to succeed in the main petition then the respondents will put to untold hardship and matter will be dragged for without reasonable cause and at that point of time it is very difficult for the respondents to execute the award against the applicants arguments seems to be reasonable. Therefore at this stage it is just and reasonable to hold that

the court has to be very cautious while granting the order of stay for operation and execution of the award since the arbitral award is equal to money decree. The provisions of Order 21 Rule 5 amply applicable and stay order has to be granted on imposing conditions arguments holds to be good. Further as per the principles laid down by Hon'ble High Court of Karnataka, Hon'ble High Court of Bombay as well as Hon'ble High Court of Delhi. The courts have to direct the applicant for depositing the portion of award amount while staying the operation of the arbitral award. So taking into consideration of all these facts and circumstances as well as principles laid down in the above referred cases I am of the opinion that the facts and circumstances of the cases relied by learned counsel for the applicant are quite difference with the facts and circumstances of the present case, on the other hand the facts and circumstances of the cases relied by the learned counsel for the respondents are similar to the case on hand. Hence it is just and reasonable to considering the prayer sought in the application on imposing reasonable conditions the applicant has proved the point No.1 partly, accordingly I have answered it in the Partly Affirmative.

**11. Point No.2:-** For the various reasons discussed in point No.1 and findings given by me on it I proceed to pass the following:-

**ORDER**

I.A.No.1 filed by the applicant/petitioner U/sec.36(2) of Arbitration and Conciliation Act R/w Sec.151 of CPC is hereby partly allowed, accordingly the operation of impugned Arbitral Award dated 13.04.2024 and modified arbitral award dated 24.05.2024 passed by the arbitral tribunal (ad hoc arbitration) under the arbitration and conciliation Act, 1996 in the matter of Rangarajan Narayanan & others V/s Quest Global Engineering Services Private Limited during the pendency of the present arbitration suit in the interest of justice and equity is hereby stayed subject to deposit of 75% of the award amount in the court or providing necessary bank guarantee to the said amount.

For arguments on main petition call on 25.02.2025.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in open Court on this the **21<sup>st</sup> day of January, 2025**).

**(MALLIKARJUN)**  
**LXXXVIII Addl.City Civil & Sessions Judge,**  
**Bengaluru.**